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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,670	12/22/2003	Matt Murray	9314-58	7610
54414 7590 12/21/2007 MYERS BIGEL SIBLEY & SAJOVEC, P.A. P.O. BOX 37428 RALEIGH, NC 27627			EXAMINER PAN, YUWEN	
			ART UNIT 2618	PAPER NUMBER
			MAIL DATE 12/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/743,670

Applicant(s)

MURRAY, MATT

Examiner

Yuwen Pan

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. In view of the Appeal Brief filed on 10/15/07, PROSECUTION IS HEREBY REOPENED. A new ground rejection is set forth below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6-9, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin et al (US 20040063456A1) in view of Todter et al (WO/94/11953).

Per claim 6, Griffin discloses a mobile terminal (see figure 4 and 16) comprising: a housing (see figure 4); a microphone positioned in the housing (see figure 4 and item 14d); a speaker positioned in the housing remote from the microphone (see figure 4 and item 14a); and a multi-mode audio processor circuit (see figure 5 and item 196) configured to apply noise cancellation (item 191) to microphone (190) and background noise microphone (48) inputs thereof, from figure 4 it shows that the speaker(14a) and the background noise microphone (48) is coupled in a very closed vicinity (see paragraph 33 and 56), a speaker (item 14a) with a noise microphone (item 48) and another microphone (14d) for human voice. Griffin does not teach that the speaker comprises a transducer and wherein the multi-mode audio processor circuit is configured to transmit sound from the transducer in a first mode of operation and to generate a composite audio signal from sound energy received by the microphone and the transducer in a

second mode of operation. Todter teaches that the speaker (see figure 3 and item 30) comprises a transducer (“bilateral transducer”) and wherein the multi-mode audio processor circuit is configured to transmit sound from the transducer in a first mode of operation and to generate a composite audio signal from sound energy received by the microphone and the transducer in a second mode of operation (see page 4 and 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Todter with Griffin’s device to implement active noise attenuation systems without the need to use a microphone.

Same arguments apply, *mutatis mutandis*, to claim 12 and 13.

Per claim 8, Griffin further teaches that the processor (196) is configured to generate an audio signal from sound energy received by the microphone (14a) in the first mode of operation (see paragraph 33).

Same arguments apply, *mutatis mutandis*, to claim 14.

Per claim 9, Griffin further teaches that the processor in associated with the noise cancellation unit is able to subtract the detected background noise signals from the corrupted speech received by the microphone (see paragraph 33).

Same arguments apply, *mutatis mutandis*, to claim 15.

4. Claims 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin et al (US 20040063456A1) and Todter et al (WO/94/11953) in view of Warnaka et al (U.S. Patent #5,046,103).

Per claim 10, Griffin doesn't teach an audio amplifier and a preamplifier are enclosed for either modes. Warnaka teaches a noise reducing system for voice microphone comprising an audio amplifier (figure 2 and item 42) in which amplifier audio signal before reaching the speaker (38). It would have been obvious to one ordinary skill in the art at the time the invention was made to having an audio amplifier for amplifying audio signal to be carried out in speaker. Although neither Griffin nor Warnaka teaches a preamplifier teaches a preamplifier for the microphone, it is inherent that electronic microphone contains a preamplifier, typically a field effect transistor (FET), and voice is converted to electrical signal by capacitance.

Same arguments apply, *mutatis mutandis*, to claim 16.

5. Claim 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin et al (US 20040063456A1), Todter et al (WO/94/11953) and Warnaka et al (U.S. Patent #5,046,103) as applied to claim 10 above, and further in view of Suzuki et al (US005251262A).

Combination of Warnaka, Todter and Griffin doesn't expressly teach of switching modes between speaker mode and noise cancellation mode. Suzuki teaches switching between speaker mode and noise cancellation mode (see abstract). It would have been obvious to one ordinary skill in the art at the time the invention was made to combine the teaching of Suzuki with the combination of Warnaka and Griffin such that the system has enough time for calculation processing and proper adaptive control processing can be executed (see column 4 and lines 1-14).

Same arguments apply, *mutatis mutandis*, to claim 17.

*Conclusion*

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

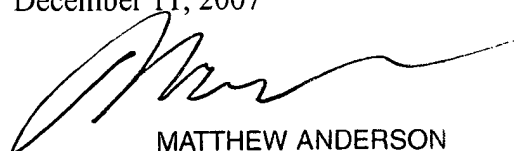
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yuwen Pan whose telephone number is 571-272-7855. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anderson D. Matthew can be reached on 571-272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yuwen Pan  
December 11, 2007

Matthew Anderson  
December 11, 2007

  
MATTHEW ANDERSON  
SUPERVISORY PATENT EXAMINER